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The State of Well-being — A Search for Meaning in the New Zealand Regulatory Environment

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The term “well-being” has gained prominence in national and international policy agendas. A malleable term with positive connotations and wide reach, it has become a standard objective for human advancement. New Zealand makes extensive use of the term in legislation, but well-being is seldom defined. This article explores well-being in New Zealand law and policy, with a focus on the Resource Management Act 1991 (RMA) and the Local Government Act 2002 (LGA). “Well-being” is revealed as a contested and context-dependent term at the heart of New Zealand’s resource debates. Application tends to the uncritical in terms of definition and theoretical foundation. This may mask important differences between the states, which are not necessarily correlative, and may result in conflation of well-being with development. Although the term “well-being” is used with frequency in legislation, important differences are evident in the subject of well-being, the nature and extent of any obligation in respect of well-being, the identity of the obligor and the particularisation of dimensions of well-being. At times these nuances are lost in translation, and whilst acknowledging the benefits of the expansive and adaptive term, recommendations are made regarding its use in environmental law.

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1. INTRODUCTION

The term “well-being” has gained prominence in the New Zealand Government agenda,¹ leading to its reintroduction to the Local Government Act 2002 (LGA)² and renewed efforts to locate meaning and develop metrics.³ New Zealand’s efforts parallel agendas internationally to promote, protect and measure well-being, some of which are inextricably bound to the sustainable development agenda.⁴ However, inclusion of the term “well-being” in legislation is less common, and as a contested concept, raises issues as to its suitability and its confinement.⁵

“Well-being” accommodates a variety of positive states, subjects and contexts. Employed as an indicator of happiness and health, its utility supports wide use, and the boundaries and domains of the term are mobile and indistinct. These features can be useful to a legislator with a broad agenda, but effect will be contingent upon implementation and/or judicial interpretation. It may also be a valuable tool to support creativity in policy-making and/or enable adaptive responses crafted for local contexts. However, without focus or definition, the use of broad terms may also engender aimlessness, confusion and stagnation.

This article examines the concept of “well-being”, its meanings and dimensions. It explores how the term “well-being” is employed in New Zealand law — its prevalence, purpose, context, utility and interpretation. In particular,

- 1 See Tony Burton *The Treasury Approach to the Living Standards Framework* (New Zealand Treasury, Wellington, 2018); New Zealand Government *The Wellbeing Budget* (New Zealand Government, Wellington, 2019); see also Conal Smith *Treasury Living Standards Dashboard: Monitoring Intergenerational Wellbeing* (New Zealand Treasury, Wellington, 2018) at 2.
- 2 Local Government (Community Well-being) Amendment Act 2019 [LGA Amendment Act], ss 4–9.
- 3 For example, OECD *How’s Life in New Zealand* (2017); New Zealand Treasury *Measuring Wellbeing: The LSF Dashboard* (2019) <<https://treasury.govt.nz>>; and Statistics New Zealand *Indicators Aotearoa New Zealand — Ngā Tūtohu Aotearoa* (2019) <<https://wellbeingindicators.stats.govt.nz>>.
- 4 United Nations Development Programme *Human Development Report 1990* (1990); Australian Treasury *Policy Advice and Treasury’s Wellbeing Framework* (2004); OECD, above n 3; and *Transforming our world: the 2030 Agenda for Sustainable Development* UN Doc A/RES/70/1 (25 September 2015); see also J Haavard Maridal and others “Wellbeing Indices: A Comprehensive Inventory of Standards and a Review of Current Comparative Measures” (2018) 149 *Ecological Economics* 1 at 1; Himanshu Shekhar, Alexander J Schmidt and Hans-Werner Wehling “Exploring Wellbeing in Human Settlements — A spatial planning perspective” (2019) 87 *Habitat International* 66 at 66; and Dan Weijers and Philip S Morrison “Wellbeing and Public Policy: can New Zealand be a leading light for the ‘wellbeing approach’?” (2018) 14 *Policy Quarterly* 3 at 5.
- 5 Alex Sarch “Well-being and the Law” in Guy Fletcher (ed) *The Routledge Handbook of Philosophy of Well-Being* (Routledge, Abingdon, 2015) 479 at 484.

the research addresses the term in the context of the Resource Management Act 1991 (RMA) and the LGA.

The key method applied is textual analysis, including a review of legislation and legal decisions, as well as an examination of associated planning instruments, commentary and general literature. The analysis demonstrates prolific use of the term “well-being” in a vast range of contexts and subjects with limited definition or description. “Well-being” is revealed as a contested and context-dependent term employed at the heart of New Zealand’s resource debates. This employment raises the merits of confining widely used terms in law, and of cross-pollination of terms between statutory contexts in environmental law. It also raises intriguing questions about who is the “ultimate lawmaker”: those who state law or those who apply it?

2. THE CONCEPT OF WELL-BEING

The literature demonstrates considerable divergence as to the meaning and theoretical underpinnings of “well-being”, which remains largely unresolved.⁶ This influences divergent approaches to measurement,⁷ and supports multi-dimensional approaches.⁸ “Well-being” can embrace happiness, health, prosperity and optional human functioning. As a policy vehicle for human advancement, no other term can quite match its breadth. Certain theoretical accounts also enable extension to non-human subjects such as animals and rivers.⁹ The term is recognised as inherently “slippery” and malleable.¹⁰ When placed within or engaged as a component of discourses such as “sustainable

6 Rachel Dodge and others “The Challenge of Defining Wellbeing” (2012) 2 *International Journal of Wellbeing* 222 at 222; and Gareth Edwards, Louise Reid and Colin Hunter “Environmental justice, capabilities, and the theorization of well-being” (2016) 40 *Progress in Human Geography* 754 at 762.

7 Mari Hagtvedt Vik and Erik Carlquist “Measuring subjective well-being for policy purposes: The example of well-being indicators in the WHO ‘Health 2020’ framework” (2018) 46 *Scandinavian Journal of Public Health* 279 at 281; and Haavard Maridal and others, above n 4, at 1.

8 Vik and Carlquist, above n 7, at 279–280; and Robert Costanza and others “Development: Time to leave GDP behind” (2014) 505 *Nature News* 283 at 285.

9 Richard Kraut *What is Good and Why: The Ethics of Well-Being* (Harvard University Press, Cambridge MA, 2009) at 3.

10 Madalina Hanc, Claire McAndrew and Marcella Ucci “Conceptual approaches to wellbeing in buildings: a scoping review” (2019) 47 *Building Research & Information* 767 at 768.

development”¹¹ or “spatial planning”¹² — terms in themselves inherently slippery — the effect is intensified. Haughton argues this malleability is important to rapid and widespread acceptance of these notions.¹³

Dictionary definitions/descriptions reflect the versatility of the term through complexity.¹⁴ The *Oxford English Dictionary* provides:¹⁵

well-being, n.

1. With reference to a person or community: the state of being healthy, happy, or prosperous; physical, psychological, or moral welfare.
2. With reference to a thing: good or safe condition, ability to flourish or prosper.
3. In plural. Individual instances of personal welfare.

The literature demonstrates that the broad nature of the term means it is often used interchangeably with other words such as “happiness”, “health”, “wellness” and “welfare” or in conjunction with those and other terms such as “safety”. The genericism of the terms renders them indistinct in many situations, although difference can be discerned.

“Happiness”, a common substitute, is not fully synonymous with “well-being” due to its dual use, conveying an emotional state of “contented pleasantness” and broader connotations closer to “well-being”.¹⁶ “Health” is often interchanged for “well-being”, and each has been defined as a component of the other.¹⁷ The World Health Organization (WHO) Constitution defines “health” broadly and framed in terms of “well-being”:¹⁸

11 For discussion of the enigmatic characteristics of the term “sustainability”, a “junk word” heavily dependent on context for interpretation, see Martin Kment “The German Approach to Sustainability and its New Zealand Equivalent” (2018) 22 NZJEL 1 at 2.

12 Phil Allmendinger and Graham Haughton “Critical reflections on spatial planning” (2009) 41 *Environment and Planning A* 2544 at 2547; and David Counsell and Graham Haughton “Regional Planning Tensions: Planning for Economic Growth and Sustainable Development in Two Contrasting English Regions” (2003) 21 *Environment and Planning C: Government and Policy* 225 at 225.

13 Allmendinger and Haughton, above n 12, at 2547. See also Iain White and Paul O’Hare “From rhetoric to reality: which resilience, why resilience, and whose resilience in spatial planning?” (2014) 32 *Environment and Planning C: Government and Policy* 934 at 934.

14 See Alisdair Rogers, Noel Castree and Rob Kitchin *A Dictionary of Human Geography* (Oxford University Press, Oxford, 2013).

15 *Oxford English Dictionary* (3rd ed, Oxford University Press, Oxford, 2014) [OED].

16 Ed Diener and others “Defining Well-Being” in Ed Diener and others (ed) *Well-Being for Public Policy* (Oxford Scholarship Online, 2010) at 12.

17 OED, above n 15.

18 The Constitution was adopted by the International Health Conference held in New York from 19 June to 22 July 1946, signed on 22 July 1946 by the representatives of 61 States (Off Rec Wld Hlth Org, 2,100), and entered into force on 7 April 1948 [WHO].

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

Despite this parity, the terms persist in being used discretely and in conjunction, which implies distinct and independent meanings for each term.¹⁹

“Wellness” is recognised as a separate positive state contrasting to illness and not simply the absence of disease,²⁰ but may be defined synonymously with “well-being”.²¹ “Welfare”, commonly applied to groups, remains capable of individual application and is used synonymously with “well-being”.²² Finally, “safety” is defined as the state of being safe, protected from or guarded against hurt or injury, free from danger.²³ Although not synonymous with “well-being”, personal safety can contribute to well-being by, for instance, limiting “negative spatial experiences” in the built environment.²⁴ Safety is recognised as essential to “well-being” in the OECD Better Life Index, applying indicators of “assault rate” and “homicide”.²⁵

Theoretical accounts are conflicting. Hanc and others,²⁶ in reviewing conceptual approaches to “well-being” in buildings, identify and separate the key psychological, sociological and economic approaches to “well-being”. Under psychological they identify hedonic (subjective well-being); eudaimonic (self-actualisation/optimal experience and functioning); equilibrium (challenges/resources); and flourishing or optimal functioning. The sociological category produces a further two — negative subjective states and positive social health. Finally, from economics — capabilities (individuals’ capabilities within the context of available opportunities), social capital and microeconomics.

Although the approaches may overlap,²⁷ a key distinction arises between subjective or objective definitions and whether lives are evaluated subjectively or objectively.²⁸ Hanc and others report that the most prevalent current approach is to view “well-being” as a multi-dimensional construct.²⁹ A range of sub-

19 See *Transforming our world*, above n 4, at cl 26 and Goal 3.

20 Herbert Meiselman “Quality of life, well-being and wellness: Measuring subjective health for foods and other products” (2016) 54 Food Quality and Preference 101 at 108; Hanc, McAndrew and Ucci, above n 10, at 768; and *OED*, above n 15, “wellness, n”, definition 1a.

21 *OED*, above n 15, “wellness, n”, definition 1b.

22 *OED*, above n 15.

23 *OED*, above n 15.

24 Hanc, McAndrew and Ucci, above n 10, at 777.

25 OECD, above n 3; see also Haavard Maridal and others, above n 4, at 7–8.

26 Hanc, McAndrew and Ucci, above n 10, at 769.

27 Alan H Goldman *Life's Values: Pleasure, Happiness, Well-Being, and Meaning* (Oxford University Press, Oxford, 2018) at 1.

28 Diener and others, above n 16, at 9–10; Vik and Carlquist, above n 7, at 280, 281.

29 Hanc, McAndrew and Ucci, above n 10, at 769.

classes or dimensions of “well-being” are identified in the literature, including physical, social, emotional/psychological, intellectual or spiritual, although the terms may be context dependent.³⁰ Approaches also vary as to whether “well-being” is conceptualised as an outcome (requiring definition) or indirectly specified as factors that determine or support well-being.³¹

Lack of definition can result in critical features being overlooked. For instance, Smith and others observe: “Quite often, environmental drivers are excluded from human well-being accounts despite the fact that the environment plays a vital role in quality of life.”³²

Adding further complexity, the term can be applied to either an individual or a group. Early research focused on individual well-being but turned to collective application to communities, regions and nations. Simple definitions of “well-being” can be applied across both individual and collective states.³³ However, this may mask critical differences between the states, not necessarily correlative.³⁴ The tragedy of the commons is a classic example of how individual interests may run counter to collective interests.³⁵ Accordingly, in assessment, simply aggregating individual subjective well-being and calculating the mean may fail to adequately comprehend these nuances. As a result, more integrated accounts of collective well-being are now engaged that balance competing ecological, social, economic and cultural factors.³⁶

The broad reach of the term is useful but may result in a failure to adequately account for critical or confounding factors. Sunstein concludes that locating quality of life/well-being and conceptions of “what matters” to people involves controversial human judgements. He underscores the role of the community and social deliberation in characterising social needs and well-being.³⁷

A recent evaluation of new measures of worldwide well-being found that “... they differ greatly in purpose, content, complexity, and most importantly, the degree to which they accurately depict wellbeing”.³⁸ The authors identified problems with multi-dimensionality of constructs, indicator weighting and omission of variables.³⁹ Despite this, there is recognition that “systematic and

30 Meiselman, above n 20, at 102–103.

31 Hanc, McAndrew and Ucci, above n 10, at 779.

32 Lisa Smith and others “Relating ecosystem services to domains of human well-being: Foundation for a US index” (2013) 28 *Ecological Indicators* 79 at 79.

33 See *OED*, above n 15.

34 Shekhar, Schmidt and Wehling, above n 4, at 67.

35 Yukiko Uchida and Shigehiro Oishi “The Happiness of Individuals and the Collective” (2016) 58 *Japanese Psychological Research* 125 at 136.

36 At 136.

37 Cass R Sunstein “Well-being and the State” (1993) 107 *Harv L Rev* 1303 at 1325.

38 Haavard Maridal and others, above n 4, at 6.

39 At 9.

comprehensive measurement of subjective and objective well-being has the potential to constructively guide policy choices”.⁴⁰

In summary, “well-being” is a multi-dimensional term understood in a range of ways and in parallel with or substitution of other common terms. However, defining it, or even spelling it (wellbeing/well-being/well being), remains largely unresolved.⁴¹ Neither is well-being a congruent whole; instead, in parallel with life, it is composed of various dimensions which may conflict with and between each other.

3. THE NEW ZEALAND GOVERNMENT APPROACH

The New Zealand Government has been seeking a tool capable of taking a relatively nuanced calculus of the public well-being. Morrison and Weijers maintain:⁴²

... if we want wellbeing to feature as one of our country’s outcomes it has to be measured and monitored appropriately to test its responsiveness to public policy interventions.

Much of the work in developing this tool has been done at Treasury and the Ministry of Social Development.⁴³ Leaning heavily on OECD’s *How’s Life?/Better Life* approach, Treasury developed its Living Standards Framework (LSF) and more recently its LSF Dashboard. According to this framework, “intergenerational wellbeing” relies on the growth, distribution and sustainability of Four Capitals — Natural, Social, Human, and Financial/Physical⁴⁴ — which are “interdependent and work together to support wellbeing”.⁴⁵ The LSF perceives three dimensions of intergenerational well-being: current, future, and risk and resilience.⁴⁶ While current and future well-being are organised into the Four Capitals,⁴⁷ the third dimension, risk and

40 Vik and Carlquist, above n 7, at 284.

41 Dodge and others, above n 6, at 222.

42 Philip Morrison and Dan Weijers “Well-being in Wellington: A report on the June 2012 Well-being and Public Policy Conference” (2012) 8 Policy Quarterly 51 at 51.

43 New Zealand Government *Our people, Our country, Our future — Living Standards Framework: Introducing the Dashboard* (The Treasury, Wellington, 2018); Ministry of Social Development *The Social Report 2016 — Te pūrongo oranga tangata* (Ministry of Social Development, Wellington, 2016) <<http://socialreport.msd.govt.nz>>.

44 Smith, above n 1, at 4.

45 At 4.

46 David Hall “New Zealand’s Living Standards Framework: what might Amartya Sen say?” (2019) 15 Policy Quarterly 38 at 40, citing New Zealand Government, above n 43, at 6.

47 At 40.

resilience, conceives of “the ability of our people and the country to withstand shocks”.⁴⁸

The framework does not specifically address “Māori conceptions of wellbeing”, but future iterations “should reflect the principle of kaupapa Māori”, so that the “wellbeing framework for Māori needs” will be “developed by Māori”.⁴⁹

The framework organises current well-being into 13 dimensions/domains, each incorporating multiple indicators — based on “market” or material outcomes (like income, wealth and housing), and non-market considerations (like health, work–life balance, social connections and personal security).⁵⁰ For example, environmental quality indicators include air and water quality.⁵¹ Statistics New Zealand is developing Indicators Aotearoa New Zealand to align indicators with its data sources so as to measure current and future well-being for the country as a whole.⁵²

Whether and how all this work gets implemented remains to be seen. The current work is more nuanced than prior efforts, but the focus is on well-being of New Zealanders from the view of central government. The value and utility of this work for most New Zealanders will turn on whether and how it is expressed in their lives and local communities.⁵³ In this respect, Weijers and Morrison identify a possible role to be played under the revised LGA.⁵⁴ Indeed, local government is generally more aware of the needs and preferences of local communities than central government.⁵⁵

4. WELL-BEING IN LAW

Human well-being is a prominent objective of environmental law. Dernbach argues that although it is easy to believe that protecting the environment is the singular purpose of environmental law, “it is more accurate to say that the overall objective of environmental law is to protect human health and well-being from the adverse effects of environmental pollution and degradation”.⁵⁶

48 At 40.

49 Smith, above 1, at 4.

50 At 5, 22–27.

51 At 5, 26.

52 Weijers and Morrison, above n 4, at 5; and Statistics New Zealand, above n 3.

53 Weijers and Morrison, above n 4, at 9.

54 At 9.

55 Arthur Grimes “Well-being at the Local Level” (2019) 15 Policy Quarterly 44 at 44.

56 John C Dernbach “Goal Setting in Environmental Decision Making” in Robert Glicksman and LeRoy Paddock (eds) *Decision Making in Environmental Law* (Edward Elgar, Cheltenham, 2016) 152.

Sunstein maintains that “both personal and social well-being are in important respects a product of law; that is, they are a function of the things to which the law gives people access”.⁵⁷ He notes the potential to link various components of well-being to legal permissions and requirements and argues for “a systematic account of the relationship between legal entitlements and the components of well-being”.⁵⁸ Sunstein advocates for the development of methods to identify those things that matter to people’s lives, with an important task being to establish democratically discussed criteria by which to measure governmental performance.⁵⁹ Underpinning this, he argues the need for a substantively plausible theory of social well-being that is also practical to apply.⁶⁰

In relation to well-being, the law commonly takes two approaches — either to protect well-being or to promote well-being. Sarch notes that a law can do either independently, or in combination since protecting a value may also promote it. On the other hand, law can also promote well-being without protecting it outright.⁶¹ It may also protect well-being fully or partially and directly or indirectly.⁶² Common law doctrines and legislation are established mechanisms for supporting and protecting human well-being. Tortious remedies, for example, can directly and indirectly protect well-being.⁶³ The doctrine of nuisance has traditionally done much of the heavy lifting in terms of protecting elements that may now fall within well-being indices as negative spatial experiences, including air, noise, light and water pollution.

Increasing codification in statute has made inroads into the role of common law. Sarch observes, however, that in the instance of the United States, the concept of well-being “does not seem to expressly figure into the content of US law very often” and that “US law only rarely makes reference to well-being in a way that suggests it is being directly protected”.⁶⁴ Sarch argues that there are good practical reasons for this reticence, including conflicting conceptions of the good life, as well as intractable debate about what the correct theory of well-being is.⁶⁵ Formulating the law around less hotly contested concepts may therefore be more prudent for legislators and result in law that is easier

57 Sunstein, above n 37, at 1326.

58 At 1326.

59 In the New Zealand example, it was observed by the High Court that for people and communities to provide for their “wellbeing” imports participation: *Progressive Enterprises Ltd v North Shore City Council* (2005) 11 ELRNZ 421, [2006] NZRMA 72 at [61].

60 Sunstein, above n 37, at 1304.

61 Sarch, above n 5, at 479.

62 At 480.

63 At 485.

64 At 484.

65 At 484.

to apply.⁶⁶ Sarch argues,⁶⁷ citing Rawls,⁶⁸ that legislators “might justifiably prefer laws for which there is an ‘overlapping consensus,’ ie, which citizens can endorse despite having differing political ideologies or conceptions of the good life”.

5. WELL-BEING IN NEW ZEALAND LAW

5.1 Well-being in Legislation

New Zealand legislation does not show the same hesitation, and instead demonstrates extensive use of the contested concept in a range of capacities and contexts. The legislation review identified 134 principal Acts employing the term “well-being”.⁶⁹ Most (72) include single references to “well-being”, but even then many were prefaced by a mixture of multiple dimensions of well-being, dependent upon the purpose and intent of the legislation, including “economic”, “material”, “social”, “cultural”, “physical”, “industrial”, “educational”, “intellectual”, “spiritual”, “mental”, “psychological”, “moral”, “religious”, “recreational”, “environmental”, and “international”.⁷⁰

The subject of well-being was distinctly varied. The legislation contemplated the well-being of different persons, groups of persons, or entities, including recognising present and future persons and entities, natural and artificial persons, as well as individual, community, regional, and national

⁶⁶ At 484.

⁶⁷ At 484.

⁶⁸ John Rawls “The Idea of an Overlapping Consensus” (1987) 7 OJLS 1.

⁶⁹ Searching New Zealand Legislation at www.legislation.govt.nz for all Principal Acts in force containing the terms “wellbeing”, “well-being”, or “well being” on 8 August 2019 produced 148 results, but several of these were duplicates due to subsequent changes in the names of legislation. Interestingly, a similar search for “wellbeing”, “well-being”, and “well being” produced 8 results, demonstrating just how inconsistent the spelling of well-being is in New Zealand legislation.

⁷⁰ For example, s 5 of the Resource Management Act 1991 [RMA] refers to social, economic, and cultural well-being; ss 3 and 10 of the Local Government Act 2002 [LGA] refer to social, economic, environmental, and cultural well-being; s 18 of the Maori Community Development Act 1962 refers to physical, economic, industrial, educational, social, moral, and spiritual well-being; s 7 of the Hauraki Gulf Marine Park Act 2000 refers to “social, economic, recreational, and cultural well-being”; s 2 of the Vincent County Empowering Community Centres Act 1970 refers to “physical or intellectual well-being”; s 4 of the Immigration Act 2009 refers to “economic and international well-being”; s 29 of the International Crimes and International Criminal Court Act 2000 refers to “physical or psychological well-being”; and s 2 of the Harassment Act 1997 refers to “mental well-being”.

interests within Aotearoa New Zealand and beyond.⁷¹ The natural environment was not neglected and the well-being of marine life, plants/vegetation, animals/wildlife, rivers (and resources), a catchment, and reserves were identified.⁷² A significant number (47) also referenced the well-being of iwi and hapū, either generally or specifically, and largely due to legislation arising from Waitangi Tribunal settlements.⁷³

The term was used at times in a descriptive manner, but where an obligation was formed the nature was varied. Obligations included to provide for,⁷⁴

71 For example, s 5 of the RMA refers to the well-being of “people and communities”; ss 3 and 10 of the LGA refer to the well-being of people, communities, districts, and regions “in the present and for the future”; s 11 of the Maori Purposes Fund Act 1934–35 refers to the “well-being of Maori”; s 3 of the Intelligence and Security Act 2017 refers to the “well-being of New Zealand”; s 7 of the New Zealand Productivity Commission Act 2010 refers to the “well-being of New Zealanders”; s 13 of the Civil Aviation Act 1990 refers to the “well-being of all passengers and crew”; s 3 of the Building Act 2004 refers to the “well-being of the people who use [buildings]”; s 4 of the Human Assisted Reproductive Technology Act 2004 refers to the “well-being of children born as a result of the performance of an assisted reproductive procedure” and “well-being of women” involved in these procedures; s 9 of the Racing Act 2003 refers to the “well-being of people who, and organisations which, derive their livelihoods from racing”; ss 3 and 33 of the New Plymouth District Council Waitara Lands Act 2018 refer to the “well-being of the Waitara River and its catchment”; s 11 of the Marine Reserves Act 1971 refers to the “well-being of marine life of reserves”; and ss 103 and 104 of the Ngāti Manawa Claims Settlement Act 2012 refer to the “wellbeing of the Rangitaiki River”.

72 For example, ss 3 and 33 of the New Plymouth District Council Waitara Lands Act 2018 refer to the “well-being of the Waitara River and its catchment”; s 11 of the Marine Reserves Act 1971 refers to the “well-being of marine life of reserves”; and ss 103 and 104 of the Ngāti Manawa Claims Settlement Act 2012 refer to the “wellbeing of the Rangitaiki River”; sch 8 of the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 refers to the “well-being of the Whanganui River and its people”; s 115 of the Tapuika Claims Settlement Act 2014 refers to the “well-being of the Kaituna River”; s 3 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 refers to the “wellbeing of the Waikato River”; ss 17, 18, 19, 55 and 57 of the Reserves Act 1977 refer to “the general well-being of the reserve” and the “well-being of the indigenous flora and fauna and other features in the reserve”; ss 9 and 72 of the Wildlife Act 1953 refer to the “wellbeing of any wildlife or vegetation” in refuges as well as the “wellbeing of any wildlife in wildlife refuges and closed game areas”; and s 11 of the Marine Reserves Act 1971 refers to the “well-being of marine life of reserves”.

73 For example, s 9 of the Heretaunga Tamatea Claims Settlement Act 2018 refers to the well-being of the hapū; ss 9 and 10 of the Hineuru Claims Settlement Act 2016 refer to the well-being of the Hineuru people; s 10 of the Iwi and Hapū of Te Rohe o Te Wairoa Claims Settlement Act 2018 refers to the “well-being of the iwi and hapū of Te Rohe o Te Wairoa”.

74 Tapuika Claims Settlement Act 2014, s 122(1)(b).

promote⁷⁵ and protect⁷⁶ well-being but also extended to improve,⁷⁷ to enhance,⁷⁸ to enable provision for,⁷⁹ to have regard to,⁸⁰ to manage adverse effects on,⁸¹ to support,⁸² to facilitate the restoration and improvement of, to increase, to conserve, to advance and maintain, and to restore.⁸³

The obligor under legislation also varied significantly, albeit to a lesser degree. The legislation imposed an obligation on a variety of people and entities. While typically the obligation under law was imposed on an arm of government agency,⁸⁴ or local government,⁸⁵ other times the obligation fell on statutorily created entities⁸⁶ or even on private persons regulated under law.⁸⁷

75 Local Government Act 2002, s 10; Auckland War Memorial Museum Act 1996, s 11; and Tapuika Claims Settlement Act 2014, s 122(1)(a).

76 New Plymouth District Council Waitara Lands Act 2018, ss 3, 33; Ngāti Whare Claims Settlement Act 2012, s 108; and Tapuika Claims Settlement Act 2014, s 115.

77 Maori Community Development Act 1962, s 18.

78 Ngāti Whare Claims Settlement Act 2012, s 108; New Plymouth District Council Waitara Lands Act 2018, ss 3, 33; and LGA, s 48M.

79 Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, s 10; RMA, s 5.

80 Social Security Act 2018, ss 4, 431.

81 Biosecurity Act 1993, s 54, provides for the development of instruments or measures by the Minister to “prevent, reduce, or eliminate the adverse effects of harmful organisms on economic wellbeing”.

82 Social Workers Registration Act 2003, s 4, defines “social work service” as “service provided for the purpose of assessing, supporting, improving, or protecting the well-being of individuals, families, groups, or communities”.

83 Tapuika Claims Settlement Act 2014, ss 115, 116; Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Preamble, ss 3, 22; Hurunui/Kaikoura Earthquakes Recovery Act 2016, s 3; Ngāti Manawa Claims Settlement Act 2012, s 103; and Maori Community Development Act 1962, s 18.

84 Animal Products Act 1999, s 161, “government agencies and other persons and agencies involved in risk management programmes, regulated control schemes, risk-based measures, or in the administration of other requirements imposed by or under this Act” are enabled to disclose information with each other as needed to ensure “the health or well-being of producers, processors, consumers, and users of animal material and products”.

85 LGA, s 10.

86 Maori Community Development Act 1962, s 18, obliges the New Zealand Maori Council to conserve and promote, encourage and assist Māori in conserving, improving, advancing and maintaining their well-being; Education Act, s 181, imposes duties on a tertiary institution council to employ standards of integrity, conduct and concern for the well-being of students; and Energy Efficiency and Conservation Act 2000, ss 6 and 20, establish the Energy Efficiency and Conservation Authority, a Crown entity, and impose a duty to take into account the social, economic, and cultural well-being of people and communities when exercising responsibilities, powers, or functions under the Act.

87 Maritime Transport Act 1994, s 19, provides that the “master of a ship” “shall be responsible for” the “wellbeing of all passengers and crew”; and Hazardous Substances and New Organisms Act 1996, ss 5 and 13, impose a duty on persons importing, possessing, or using a hazardous substance or new organisms to do so in a manner that recognises and

Rarely is the term defined in legislation, and even then, not well. Only one statute included the term “well-being” in its “Interpretation” section. Section 2(1) of the Oranga Tamariki Act 1989 provides: “In this Act, unless the context otherwise requires ... well-being, in relation to a child or young person, includes the welfare of that person”. Welfare is not defined. Section 7 of the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 offers this guidance on the meaning of the term “health and well-being”: “In this Act ... health and well-being includes environmental, social, cultural, and economic health and well-being”. Rather than providing meaning for the term itself, this definition defines the dimensions of well-being to consider.

Review of the legislation clarifies how use of the term “well-being” shifts concerning context, purpose, subject, obligation and responsible entity/obligor. It also underscores the malleable nature of the term “well-being” and its chameleon propensity to slip in and out of contexts and vocabularies. This propensity, although clearly useful, raises a red flag in relation to accepted definitions and quantification, and by extension, absence of theoretical explanation to locate meaning.

In turn, this introduces questions about the sources of the law and the role and nature of the ultimate lawmaker. Statements of general principle and broad/general terms in legislation provide courts scope for the exercise of discretionary judgement and opportunity for creativity,⁸⁸ and administrators with greater discretion.⁸⁹ Section 5(1) of the Interpretation Act 1999 provides that: “The meaning of an enactment must be ascertained from its text and in the light of its purpose”, a matter which is made more complex if the particular word is located within a purpose provision.

It is well understood that language is not precise, that words can carry different meanings,⁹⁰ and that words can change over time. Courts may need to take an “ambulatory” or dynamic approach to the law, recognising that the ordinary meaning of the word has evolved to a different meaning or nuance.⁹¹ Section 6 of the Interpretation Act provides that “An enactment applies as the circumstances arise”, meaning that “well-being” should be defined according to its use in the present time. However, where the legislation requires application to a future state, such as consideration of the well-being of future generations,

provides for the “maintenance and enhancement of the capacity of people and communities to provide for their own economic, social, and cultural well-being and for the reasonably foreseeable needs of future generations”.

88 Ross Carter *Burrows and Carter: Statute Law in New Zealand* (5th ed, LexisNexis, Wellington, 2015) at 136.

89 At 136.

90 At 137.

91 At 413.

the concept may need to dynamically contemplate further evolution in that regard as well.

Use of the phrase “circumstances” also brings with it the issue of context. Keith notes that arguments about meaning can involve apparently simple words and phrases such as “separate property”.⁹² He states: “Such words and phrases, cannot of course, have a single meaning that applies inexorably in all statutory contexts.”⁹³ Legal decisions suggest that although meanings and terms in one Act may apply to the same terms in another Act, it is unwise to make such an assumption, as contexts and purposes may make analogies inapplicable.⁹⁴

What does this mean for well-being? To bring the term to a particular context this article will now focus on the RMA due to the prominence of the term “well-being” in the statutory purpose of the Act, which is the primary vehicle for the management of natural and physical resources in New Zealand and further, due to a recently announced Government review of the legislation. The Local Government Act 2002, as amended by the Local Government (Community Well-being) Amendment Act 2019 (the Amendment Act 2019), will provide a secondary focus due to its role in influencing the structure of government that underpins local government, its relationship to the RMA, and its role in delivering community well-being.

5.2 The Local Government Act 2002

Provision for “local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach” has now been reinstated in the purpose of the LGA.⁹⁵ The reinstatement is important, focusing broadly on the four well-beings in contrast to the narrowed focus on infrastructure, services, and regulatory functions applying during 2012 to 2019.⁹⁶ The reintroduction is supported by concomitant change to the purpose of local government,⁹⁷

92 Kenneth Keith “Sources of Law, Especially in Statutory Interpretation, with Suggestions about Distinctiveness” (2018) 8 VUWLRP 48 at 87.

93 At 87.

94 Carter, above n 88, at 269–270; and see discussion in Decision on marine consent application by Trans-Tasman Resources Ltd (2014) at [78]–[79] urging caution with uncritical application of case law and understanding about statutory provisions between different environments and statutory contexts (in that case as between the RMA and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 particularly where there has been a deliberate departure in the provision.

95 LGA, s 3(d) as amended 2019 by LGA Amendment Act, s 4.

96 LGA, s 3(d) as inserted 5 December 2012 by s 4 of the Local Government Act 2002 Amendment Act 2012 (2012 No 93) [LGA Amendment Act].

97 LGA, s 10(1)(b) as amended 2019 by LGA Amendment Act.

principles of local government⁹⁸ (including consideration of the likely impact of any decision on each aspect of well-being referred to in s 10), and financial management,⁹⁹ and to sch 10,¹⁰⁰ requiring information in plans and reports on the effects of government activities on community social, economic, environmental, or cultural well-being. A local authority must give effect to the s 10 purpose of local government.¹⁰¹

The amendments place the four well-beings and the pursuit of a sustainable development approach squarely in the focus of local government. The purpose, principles and decision-making sections create obligations, expressed through management strategies, long-term plans, the annual plan, and funding and financial policies and related decisions.¹⁰² The well-being obligation falls upon *local authorities*,¹⁰³ the subject of the obligations is *communities*, and the nature of the obligation requires both *promotion* of well-being and that a local authority *should take account of* the likely impact of any decision on each aspect of well-being. Identification of community outcomes for promotion of well-being extends to both present and future well-being.¹⁰⁴ In this manner, an ongoing obligation to advance well-being is created, as well as to consider how well-being may be either positively or adversely affected by decision-making. Each obligation is distinct and may arise independently of each other, or in combination.

The Act does not define “well-being” and provides little guidance on the meaning or purpose of these powers for local government. Furthermore, there are no clear links between local government decision-making and the work done at Treasury. Morrison views these omissions as significant and notes that “without greater clarity it will be difficult to measure the results of new investments made under the Act”.¹⁰⁵ In addition, Morrison argues that greater attention to the well-being of individuals living in particular economic and social contexts is required to constitute the theoretical and methodological base upon which to build effective local well-being policy.¹⁰⁶

Concerning links to other local decision agendas, Palmer concludes that the 2019 Amendment Act and its broader view based on a sustainable development approach “will directly influence the content of regional policy

98 LGA, s 14(1)(c)(iii) as amended 2019 by LGA Amendment Act.

99 LGA, s 101(3)(b) as amended 2019 by LGA Amendment Act.

100 LGA, sch 10 cl 2(1)(c) and cl 23(d) as amended 2019 by LGA Amendment Act.

101 LGA, s 11(a) as amended 2019 by LGA Amendment Act.

102 Kenneth Palmer “Legislation” in Derek Nolan (ed) *Environmental and Resource Management Law* (online ed, LexisNexis) at [2.14].

103 Defined by LGA, s 6 to mean a regional council or territorial authority.

104 LGA 2002, s 5(1).

105 Philip S Morrison “Measuring Local Well-being: Reflections on the Local Government (Community Well-Being) Amendment Bill” (2019) 15 Policy Quarterly 50 at 51.

106 At 51.

statements, and regional and district plans under the Resource Management Act 1991 (RMA)”.¹⁰⁷ Despite this, Severinsen and Peart criticise the lack of integration and the variant approaches to well-being in the LGA and the RMA — in particular, the lack of proactivity for well-being in the RMA. They identify a normative disconnect, such that positive aspirations of councils and communities may be thwarted if local LGA strategies assume insufficient weight in regulatory processes operating under the RMA.¹⁰⁸

5.3 The Resource Management Act 1991

The RMA, like the LGA, confers wide powers upon administrators who must act in accordance with broad purpose and principle provisions. “Well-being” is situated at the heart of these provisions.¹⁰⁹ Although the same term is employed in each statute there are important differences in the nature and direction of the obligations.

The sustainable development purpose of the LGA is confined in the instance of the RMA through the latter’s purpose of sustainable management, a narrower concept than sustainable development. Likewise, the LGA’s explicit engagement of the four well-beings is constrained. Section 5 of the RMA provides:

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—
 - (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

¹⁰⁷ Palmer, above n 102.

¹⁰⁸ Greg Severinsen and Raewyn Peart *Reform of the Resource Management System: The Next Generation — Working Paper 3* (Environmental Defence Society, Auckland, 2018) at 75.

¹⁰⁹ LGA, s 3; and RMA, s 5.

Argument about the interpretation of s 5 has been sustained,¹¹⁰ due ostensibly to the broad nature of the provision,¹¹¹ but indirectly to its pivotal role in the distribution and protection of natural capital. The debates drew some attention to the nature and definition of “well-being”, largely to acknowledge the breadth of the concept and the opportunity for the dimensions of well-being to compete between and within themselves.¹¹² However, the central debate concerned legislative priorities as between enabling human well-being, and securing intergenerational and environmental interests. The Supreme Court has now settled debate as to competing interests addressed by s 5, stating that the section should be read as an integrated whole.¹¹³

The Supreme Court also acknowledged that the definition of sustainable management is “general in nature” and that standing alone its application may be uncertain and difficult. Yet the Court noted that s 5 is not intended to be an operative provision. Rather, the RMA hierarchy of planning documents¹¹⁴ is designed to expand upon the purpose and form the basis for decision-making.¹¹⁵

In setting the direction of the management of the built and natural environment, the RMA brings human well-being to the fore. It does this in both a direct and indirect manner and can be distinguished from the approach of the LGA on several key counts.

First, rather than placing a direct obligation upon local authorities to promote well-being, people *and* communities are enabled to provide for their own well-being. In contrast to the LGA, much of the activity under the RMA is generated by the private sector, applies to private property, and is influenced by

110 See, for example, BV Harris “Sustainable Management as an Express Purpose of Environmental Legislation: The New Zealand Attempt” (1993) 8 Otago LR 51; Simon Upton “The Resource Management Act, Section 5: Sustainable Management of Natural and Physical Resources” Resource Management News (November/December 1994); and Kerry James Grundy “In Search of a Logic: s 5 of the Resource Management Act” [1995] NZLJ 40.

111 See *New Zealand Rail Ltd v Marlborough District Council* [1994] NZRMA 70 at [86] per Greig J; and Harris, above n 110, at 67–68.

112 See Harris, above n 110, at 59–60, 65–66.

113 *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [24].

114 The RMA rests upon a three-tier structure of administration, with central government devolving power to local authorities to administer local and regional resource management. Through devolution, the dominant method for delivering well-being outcomes under the RMA is the development and implementation of regional and district plans produced by local authorities. Resource management plans are not, however, the only means — for instance, higher standards of amenity can be secured by restrictive covenants and similar mechanisms: *Cleary v Queenstown Lakes District Council* EnvC Christchurch C70/06, 8 June 2006 at [28].

115 *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [151]–[152].

the market-based approach to resource use underlying the RMA. The obligation on local authorities regarding well-being under RMA, s 5 has therefore been cast as a passive one.¹¹⁶

Despite this, the role that local authorities play under the RMA has “active” components in relation to well-being. Severinsen, Peart and Cox ask, “Is the scope of the RMA wider than it appears?”¹¹⁷ and the present authors agree this is the case. Provision for well-being is further influenced by mandate, functions and methods. Obligation for consideration and provision for well-being by those exercising functions and powers under the RMA is indirectly sustained by the principles of the RMA. Sections 6 to 8 matters (which create strong mandatory obligations on decision-makers) are not separate from the well-being of people and communities but are elements of that well-being.¹¹⁸ Similar parallels can be drawn to the matters referred to in s 5(2)(a)–(c).

Furthermore, local authority functions described in pt 4 have the effect of directly promoting well-being, including regional council functions “to achieve integrated management of natural and physical resources”¹¹⁹ and “to ensure that there is sufficient development capacity in relation to housing and business land to meet the expected demands of the region”.¹²⁰

Regulatory methods employed in resource management plans¹²¹ implement a local authority’s conception of well-being¹²² by encouraging activities and outcomes through techniques such as zoning for permitted activities and performance and development standards. Justification for such provision will stem back to the costs and benefits, in terms of environmental, economic, social, and cultural effects,¹²³ but benefits will commonly be drawn as a contribution to well-being. In this context, people and communities may then choose to enable their well-being in accordance with the planning scheme or alternatively locate elsewhere or seek exception through consent processes.

The second distinguishing factor between the statutes is that the RMA makes no reference to enabling people and communities to provide for their “environmental well-being”, perhaps relying upon the safeguards included in s 5(2)(a)–(c) and accompanying environmental principles in ss 6 to 8 to indirectly support and protect environmental well-being. Despite this, the

116 *Wakatipu Environmental Soc Inc v Queenstown Lakes DC* [2000] NZRMA 59 (EnvC) at [17].

117 Greg Severinsen, Raewyn Peart and Brooke Cox *Reform of the Resource Management System: The Next Generation — Working Paper 2* (Environmental Defence Society, Auckland, 2018) at 72.

118 *Long Bay-Okura Great Park Soc Inc v North Shore CC* unreported EnvC A078/08 at [284].

119 RMA, s 30(1)(a).

120 Section 30(1)(ba).

121 Sections 68 and 76.

122 Derived through First Schedule processes under the RMA including public participation.

123 RMA, s 32(2)(a).

lack of direct reference to enabling environmental well-being seems like an anomalous gap in enabling self-provision of well-being in the management of natural and physical resources. Subsections 5(2)(a)–(c) are directed at the *needs* of future generations, *life supporting capacities* of air, water, soil, and ecosystems, and mandate *mitigation* of effects as an alternative to remediation or avoidance. Environmental well-being is a broader concept, enabling positive environmental gains at potentially higher thresholds than those required by s 5(2)(a)–(c).

Thirdly, the LGA directs explicit consideration of the likely impact of any decision on each aspect of well-being, whereas the RMA directs focus to adverse effects of activities on the environment (which includes people and communities and related social, economic, aesthetic, and cultural conditions),¹²⁴ environmental bottom lines and the needs of future generations.¹²⁵ Schedule 4 also directs consideration of effects to social, economic, or cultural well-being in an assessment of environmental effects accompanying an application for resource consent under s 88 of the RMA.¹²⁶ Decisions, not uncommonly, conflate effects on well-being with a lack of enablement.¹²⁷

Fourthly, the subject of the well-being in the instance of the LGA is *communities*, whereas the RMA enables the well-being of both *people and communities*.¹²⁸ The LGA is also explicitly focused upon present *and future* well-being,¹²⁹ whereas in the RMA this has been determined through jurisprudence.¹³⁰

The application of the term “well-being” in policy statements and plans adds a further layer to interpretation of decisions of the courts.

5.3.1 National and regional policy statements

National and regional policy statements (NPSs and RPSs) expand on the concept of “well-being” under the RMA. NPSs are a mechanism for central government to state objectives and policies for matters of national significance that are

124 Section 5(2)(c) and s 2, definition of “environment”.

125 Section 5(2)(a)–(b).

126 Schedule 4 cl 7(1)(a).

127 For instance: *Final Report and Decision of the Board of Inquiry into the Proposed Men's Correctional Facility at Wiri* Vol 1 (2011) at [399]; *Final Report and Decision of the Board of Inquiry into the Christchurch Southern Motorway Proposal* Vol 1 (2013) at [560].

128 The enablement of “people and communities” includes different groups within New Zealand with different views. It is not restricted to landowners/developers, and Māori constitute one of the communities to be taken into account: *Blakeley Pacific Ltd v Western Bay of Plenty DC* [2011] NZEnvC 354 at [189]–[190].

129 LGA, ss 5(1), definition of “strategic asset”, 48R(2)(b), 48S(2)(b).

130 *Queenstown-Lakes District Council v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299, [2006] NZRMA 425 at [44].

relevant for achieving the purpose of the Act.¹³¹ NPSs sit atop of the policy hierarchy and guide subsequent RMA decision-making. There are currently five NPSs,¹³² and except for the NPS on Electricity Transmission every NPS cites the provision and/or the protection of well-being as an animating principle.

In the context of NPSs, “well-being” takes on a relatively expansive prospect especially as compared to the words of s 5. The policies recognise that well-being is not simply something that is enabled — so that people and communities can pursue economic, social, or cultural well-being — but that well-being is something that rests in the natural environment and must be protected. Thus, for instance, the New Zealand Coastal Policy Statement recognises that both use *and* protection of the coastal environment are needed for well-being. On the one hand, “subdivision, use, and development” within the coastal environment, with specific reference to aquaculture, infrastructure, and mineral extraction, are needed for the “social, economic and cultural well-being of people and communities”;¹³³ on the other hand, protection of “habitats of living marine resources”, high-quality coastal water and freshwater are likewise important to the well-being of the nation and communities.¹³⁴

The National Policy Statement on Urban Development Capacity 2016 (NPSUDC) goes one step further, and in relation to responsive planning and outcomes for planning decisions¹³⁵ places obligations upon local authorities to *provide* for social, cultural, economic and environmental well-being,¹³⁶ extending the RMA purpose to enable well-being to that of the LGA mandate, in a manner queried by the Environment Court.¹³⁷

The NPSs acknowledge various subjects of well-being, including New Zealand and its people and communities; the environment, land, and resources like fisheries, flora and fauna, freshwater bodies and “management units”; and future generations.¹³⁸

131 RMA, s 45(1).

132 National Policy Statement on Urban Development Capacity 2016; National Policy Statement for Freshwater Management 2014 (updated in 2017); National Policy Statement for Renewable Electricity Generation 2011; National Policy Statement on Electricity Transmission 2008; and New Zealand Coastal Policy Statement 2010.

133 New Zealand Coastal Policy Statement 2010, Objective 6 and Policies 6, 8.

134 Preamble and Objective 6.

135 Defined as “**Planning decision** means any decision on any plan, a regional policy statement, proposed regional policy statement, or any decision on a resource consent; National Policy Statement on Urban Development Capacity 2016 [NPSUDC] at 8.

136 NPSUDC, Objective OC1 and Policy PA3.

137 *Bunnings Ltd v Queenstown Lakes District Council* [2019] NZEnvC 59, [2019] NZRMA 426 at [45].

138 National Policy Statement on Urban Development Capacity 2016, Preamble, Objectives OA1, OC1, OC2, Policies PA3, PA4; National Policy Statement for Freshwater Management 2014 (updated in 2017), Preamble, National Significance of freshwater and Te Mana o Te Wai, Objectives A4, B5, Policies A7, B8, CA2; National Policy Statement for

Many RPSs likewise take a similarly expansive view of well-being, in terms of which dimensions are relevant. Thus, the policy statements increase scope by reference to environmental well-being,¹³⁹ spiritual, cultural, historic and physical well-being,¹⁴⁰ intellectual and physical well-being,¹⁴¹ and ecological and ecosystem well-being.¹⁴²

The RPSs also recognise a broader class of subjects or entities for whom well-being ought to be pursued or protected. Section 5 refers to people and communities. The policy statements refer to both subsets of people and communities as well as the well-being of entities: Tangata Whenua well-being,¹⁴³ Mana Whenua well-being,¹⁴⁴ Māori well-being,¹⁴⁵ Aucklanders' well-being,¹⁴⁶ Northlanders' well-being,¹⁴⁷ human well-being,¹⁴⁸ regional well-being,¹⁴⁹ future well-being,¹⁵⁰ well-being of the biosphere,¹⁵¹ Waikato River well-being,¹⁵² Waikato River catchment well-being,¹⁵³ Waipa River well-being,¹⁵⁴ people's (as opposed to individuals') well-being,¹⁵⁵ well-being of communities in the Rangitaiki River Catchment,¹⁵⁶ Ngāi Tahu well-being,¹⁵⁷ Kāi Tahu well-being,¹⁵⁸ and Ngāti Kēaroa Ngāti Tuara well-being.¹⁵⁹

Renewable Electricity Generation 2011, Preamble; New Zealand Coastal Policy Statement 2010, Preamble, Objective 6, Policies, 6, 8; New Zealand Coastal Policy Statement 2010, Preamble, Objective 6, Policy 6; National Policy Statement for Renewable Electricity Generation, Preamble.

139 Auckland Unitary Plan 2016 [AUP 2016], B7.1; Canterbury Regional Council RPS 2019, s 1.1.1; Northland RPS 2016, s 4.1.2; Otago RPS 2019, p 21; Southland RPS 2017, Policy BRL.1; Taranaki Regional Council RPS 2010, s 5.2; Waikato RPS 2016, s 7.1.5.

140 Waikato RPS 2016, Apps A-1 and A-2; Auckland RPS 1999, s 3.1; Bay of Plenty RPS 2018, p 205.

141 Auckland RPS 1999, s 3.1.

142 Otago RPS 1998, p 88; Bay of Plenty RPS 2018, p 166.

143 Auckland RPS 1999, s 3.5; Northland RPS 2016, s 2.5; Waikato RPS 2016, s 4.3.4.

144 AUP 2016, B6.2.1, B6.6.

145 Auckland RPS 1999, App D; AUP 2016, B6.4.1; Otago RPS 2019, p 104.

146 Auckland RPS 1999, s 2.3.

147 Northland RPS 2016, s 2.4.

148 Otago RPS 2019, p 11.

149 Canterbury Regional Council RPS 2019, Objective 3.11; AUP 2016, s B9.1

150 Canterbury Regional Council RPS 2019, s 1.2.2; Auckland RPS 1999, s 12.2.1.

151 Bay of Plenty RPS 2018, p 166.

152 Waikato RPS 2016, pp 1.1, 1.7.

153 Pages 1.1, 1.7.

154 Pages 1.1, 1.7.

155 Auckland RPS 1999, s 9.4.9.

156 Bay of Plenty RPS 2018, p 230.

157 Canterbury Regional Council RPS 2019, s 5.1.5.

158 Otago RPS 2019, p 18.

159 Waikato RPS 2016, App A-3.

5.3.2 Decisions

From the decisions of the courts analysed, no clear definition of the term “well-being” emerged.¹⁶⁰ References are scattered throughout decisions but are commonly employed in passing and contribute little to analysis of the concept. The term is employed in two key ways, primarily as a justification for enabling development¹⁶¹ (either through a resource consent or plan-making process) on the basis that it contributes to either social, cultural, or economic well-being, or in the alternative, as a reason for preventing development on the basis that the development did not enable people and/or communities to provide for aspects of well-being.¹⁶² While the RMA specifically mentions only social, economic, and cultural well-being, the courts have also cited environmental¹⁶³ and occasionally spiritual well-being as a consideration, usually in the context of Treaty of Waitangi obligations. Results from Envivo software analysis suggests that the courts most commonly recite the three well-beings set out in s 5 collectively, likely as part of a quotation of statute or rule, followed by more specific references to economic well-being, then collectively economic and social well-being, followed by social well-being, and finally cultural well-being.

A problematic result of the structure of s 5 is that well-being simpliciter may be conflated with development interests¹⁶⁴ and is pitched antagonistically

160 Although the Court in *Long Bay-Okura Great Park Soc Inc v North Shore CC* unreported EnvC A078/08 at [291] underlined the “dearth of higher authority on the meaning of ‘enabling people and communities to provide for wellbeing’” over a decade ago, no courts have subsequently ventured into the breach. Subsets of well-being, particularly economic well-being, have been examined, if not fully defined. For instance, *New Zealand Rail v Marlborough District Council* [1994] NZRMA 70 discussed the economic considerations that fall within the definition of economic well-being, concluding that “broad aspects of economics” fall within the definition, and the “narrower consideration of financial viability” does not. See also *Estate of PA Moran v Transit New Zealand* unreported EnvC W055/99 at [609], noting that “the costs/benefit analysis of the options in favour of the bypass proposal ... generally fall within the definition of economic wellbeing ...”.

161 For instance, enabling affordable housing: *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council* (2011) 16 ELRNZ 460, [2011] NZRMA 321 at [46]; and housing choice: *Gibbston Vines Ltd v Queenstown Lakes District Council* [2019] NZEnvC 115 at [217].

162 For example, *Clark v Queenstown Lakes District Council* [2010] NZEnvC 389 at [68]–[71], upholding decision of council to deny resource consent for a residence where individual well-being would be enabled but community well-being would not and adverse effects would not be avoided, remedied or mitigated.

163 See *Ngati Ruahine v Bay of Plenty Regional Council* [2012] NZHC 2407 at [35], [52]–[53]; *McGuire v Hastings District Council* (2002) 8 ELRNZ 14 (HC) at [20]–[21]; *Mahuta & Waikato Tainui v Waikato Regional Council & Waikato District Council & Anchor Products Ltd* EC Auckland A91/98, 29 July 1998 at [160]–[163].

164 See, for instance, *Environmental Defence Society Inc v Otago Regional Council* [2019] NZHC 2278 at [16].

against environmental interests, thus limiting recognition of its holistic attributes, and dependence upon the natural environment. This stretches the natural meaning of the word, even when narrowed, for instance, to economic or social dimensions.

It is clear from the decisions that well-being is a fluid state and that provision by communities for well-being, and health and safety, embraces an ongoing state of affairs.¹⁶⁵ In addition to temporal fluidity, it may also contemplate spatial and spiritual fluidity — for instance, social and cultural well-being may comprise relationships and involve metaphysical factors.¹⁶⁶

As with the term itself, there is no clear definition of the different dimensions of well-being, and decisions of the courts suggest application of standard methods of statutory interpretation in this regard.¹⁶⁷ The decisions demonstrate that social well-being has a broad reach and overlaps with both cultural and economic dimensions. The term “social” means the way people relate to or behave towards one another.¹⁶⁸ Decisions have identified the fulfilment of aspects of social well-being in many ways, including through education facilities,¹⁶⁹ affordable housing or community housing,¹⁷⁰ renewable wind-energy generation,¹⁷¹ urban regeneration,¹⁷² convenience in the context of traffic assessments,¹⁷³ dams to lessen the consequences of drought,¹⁷⁴ roading development,¹⁷⁵ low-cost relocatable dwellings,¹⁷⁶ farm vegetation clearance

165 *Queenstown-Lakes District Council v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299 at [44].

166 *Te Runanga o Ngai Te Rangi Trust v Bay of Plenty Regional Council* [2011] NZEnvC 402 at [304].

167 *Ngataringa Bay 2000 Inc v Attorney General* unreported Planning Tribunal A016/94 at 26.
168 At 26.

169 *Ayrburn Farm Estates Ltd v Queenstown Lakes District Council* [2012] NZHC 735, [2013] NZRMA 126 at [24]; *Montessori Pre-School Charitable Trust v Waikato District Council* [2007] NZRMA 55 at [17].

170 *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council* (2011) 16 ELRNZ 460, [2011] NZRMA 321 at [46].

171 *Outstanding Landscape Protection Society Inc v Hastings District Council* [2008] NZRMA 8 at [36] and note also potential to detract from social well-being due to adverse effects at [116].

172 *Ngati Maru Iwi Authority Inc v Auckland City Council* HC Auckland AP18-SW01, 24 October 2002 at [40].

173 *Shell Oil New Zealand Ltd v Manukau City Council* HC Wellington AP264/92, 2 December 1993, Greig J at 9.

174 *Final Report and Decisions of the Board of Inquiry into the Tukituki Catchment Proposal* Vol 1 (2014) at [2143].

175 *Final Report and Decision of the Board of Inquiry into the Transmission Gully Proposal* Vol 1 (2012) at [321].

176 *NZ Heavy Haulage v Central Otago DC* unreported EnvC C045/04 at [15].

to increase productivity,¹⁷⁷ and a music festival.¹⁷⁸ Social well-being can be detracted from by tree shading affecting admission of light,¹⁷⁹ the construction of a prison,¹⁸⁰ intrusive noise,¹⁸¹ and provision of electricity.¹⁸²

Cultural well-being is also broadly interpreted, encompassing spiritual dimensions and considered not exclusive to Māori. Cultural well-being can be supported through the provision of educational facilities,¹⁸³ convenience in the context of traffic assessments,¹⁸⁴ dams to lessen the consequences of drought,¹⁸⁵ protection of water as a matter central to Māori well-being,¹⁸⁶ provision of electricity,¹⁸⁷ and a music festival.¹⁸⁸ Detraction from cultural well-being may arise through development impacts to culturally and spiritually significant landscapes,¹⁸⁹ and location of a funeral business next to a community centre.¹⁹⁰

Examples of provision for economic well-being include development of a supermarket (introducing trade competition),¹⁹¹ affordable or community

177 *Director-General of Conservation v Wairoa DC* unreported EnvC W081/07 at [42] and [56]–[58].

178 *Pierau v Auckland Council* [2017] NZEnvC 90 at [258].

179 *Auckland City Council v John Woolley Trust* (2008) 14 ELRNZ 106 at [48].

180 Argued but not proven on the balance of probabilities in *Final Report and Decision of the Board of Inquiry into the Proposed Men's Correctional Facility at Wiri* Vol 1 (2011) at [399], citing *Beadle & Ors v The Minister of Corrections & Anor* A074/2002 152 at [787] and the need for perceptions of harm to be well-founded.

181 *Speedy v Rodney District Council* unreported Planning Tribunal A134/93 at 6.

182 *Final Report and Decision of the Board of Inquiry into the Tauhara II Geothermal Development Project* Vol 1 (2010) at [403] and [413].

183 *Montessori Pre-School Charitable Trust v Waikato District Council* [2007] NZRMA 55 at [17].

184 *Shell Oil New Zealand Ltd v Manukau City Council* HC Wellington, AP264/92, 2 December 1993, Greig J at 9.

185 *Final Report and Decisions of the Board of Inquiry into the Tukituki Catchment Proposal* Vol 1 (2014) at [2143].

186 *Final Report and Decisions of the Board of Inquiry into the Mackays to Peka Peka Expressway Project* Vol 1 (2013) at [1022].

187 *Final Report and Decision of the Board of Inquiry into the Tauhara II Geothermal Development Project* Vol 1 (2010) at [403] and [413].

188 *Pierau v Auckland Council* [2017] NZEnvC 90 at [258].

189 *Outstanding Landscape Protection Society Inc v Hastings District Council* [2008] NZRMA 8 at [116].

190 *Cook Island Community Centre Society (HB) Inc v Hastings District Council* [1994] NZRMA 375 at 381.

191 *Queenstown Central Ltd v Queenstown Lakes District Council* (2013) 17 ELRNZ 585 at [72].

housing¹⁹² and low-cost relocatable dwellings,¹⁹³ renewable wind-energy¹⁹⁴ and geothermal¹⁹⁵ generation, education facilities,¹⁹⁶ urban regeneration,¹⁹⁷ convenience (in the context of traffic assessments)¹⁹⁸ and roading development,¹⁹⁹ dams (to lessen the consequences of drought),²⁰⁰ marine farming,²⁰¹ and vegetation clearance to increase farm productivity.²⁰²

Economic well-being can encapsulate both individual and collective well-being, but it is “the broad aspects of economics rather than the narrower consideration of financial viability” of a project that is of relevance.²⁰³ This does not mean that contributions to individual economic well-being are irrelevant and may, for instance, include the economic impact of a condition of consent, including economic benefits derived from extending the term of a discharge consent.²⁰⁴ The decisions also demonstrate that although trade competition cannot be considered, the social, cultural, and economic effects arising as a result of trade competition can.²⁰⁵

The various dimensions are employed somewhat uncritically and interchangeably. In addition, well-being simpliciter is not uncommon — for

192 *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council* (2011) 16 ELRNZ 460 at [46]–[51].

193 *NZ Heavy Haulage v Central Otago DC* unreported EnvC C045/04 at [15].

194 *Outstanding Landscape Protection Society Inc v Hastings District Council* [2008] NZRMA 8 at 36.

195 *Final Report and Decision of the Board of Inquiry into the Tauhara II Geothermal Development Project* Vol 1 (2010) at [403] and [413].

196 *Montessori Pre-School Charitable Trust v Waikato District Council* [2007] NZRMA 55 at [17].

197 *Ngati Maru Iwi Authority Inc v Auckland City Council* HC Auckland AP18-SW01, 24 October 2002 at [40].

198 *Shell Oil New Zealand Ltd v Manukau City Council* HC Wellington AP264/92, 2 December 1993, Greig J at 9.

199 *Final Report and Decision of the Board of Inquiry into the Transmission Gully Proposal* Vol 1 (2012) at [321]; *Shell Oil New Zealand Ltd v Manukau City Council* HC Wellington AP264/92, 2 December 1993, Greig J at 9.

200 *Final Report and Decisions of the Board of Inquiry into the Tukituki Catchment Proposal* Vol 1 (2014) at [2143].

201 *Aqua King Ltd v Marlborough DC* unreported EnvC W071/97 at [13].

202 *Director-General of Conservation v Wairoa DC* unreported EnvC W081/07 at [42] and [56]–[58].

203 *NZ Rail Ltd v Marlborough District Council* [1994] NZRMA 70 at 88.

204 *PVL Proteins Ltd v Auckland RC* unreported EnvC A061/01 at [67]; see also *Gibbston Vines Ltd v Queenstown Lakes District Council* [2019] NZEnvC 115 at [217] but note reference to scale. For discussion of “community scale” enablement or disablement having greater priority than individual aspirations see *Albert Road Investments Ltd v Auckland Council* [2018] NZEnvC 102 at [25]–[26].

205 *Discount Brands Ltd v Westfield (New Zealand) Ltd* [2005] NZSC 17, [2005] 2 NZLR 597 at [120] per Blanchard J.

instance, supported by residential subdivision²⁰⁶ or recreational tracks;²⁰⁷ or for disabling community well-being, a lack of recreational support facilities.²⁰⁸

The term is applied to both *people* and *communities*, creating an additional contrast to the LGA, which has a focus upon collective well-being, determined through public processes.²⁰⁹ Although the RMA decisions more commonly reference collective/community well-being, there is authority to suggest that people's interests are not to be submerged in the interests of the community without good reason.²¹⁰

In application, arguments persist about how to approach the competing interests represented through s 5. Not only will aspects of enabling well-being compete against the need to protect and safeguard the environment, but aspects of well-being may compete against each other,²¹¹ or themselves,²¹² in the absence of statutory prioritisation and perhaps with it. The jurisprudence establishes that these contests will be a matter of judgement and proportionality decided upon the weight of evidence and in consideration of relative priorities expressed through policy statements and plans and identified through categories of activities in plans.²¹³

The existence and extent of impacts to well-being are assessed in the same manner as other adverse effects, according to the weight of evidence and established on the balance of probabilities.²¹⁴ Assessment and proof of

206 *Ngati Ruahine v Bay of Plenty Regional Council* [2012] NZHC 2407, [2012] NZRMA 523 at [52].

207 *Federated Farmers of NZ Inc v Queenstown Lakes DC* [2010] NZEnvC 109 at [60]; note also reference to health as a component of well-being.

208 *Save Wanaka Lakefront Reserve Inc v Queenstown Lakes District Council* [2017] NZEnvC 88 at [271].

209 For example, community outcomes and long-term plans.

210 *McNamara v Tasman District Council* EC Wellington W072/99, 16 July 1999 at [124].

211 For example, *Watercare Services Ltd v Minhinnick* (1997) 3 ELRNZ 511 at 525; *Outstanding Landscape Protection Society Inc v Hastings District Council* [2008] NZRMA 8 at [116].

212 *Final Report and Decision of the Board of Inquiry into the Proposed Men's Correctional Facility at Wiri* Vol 1 (2011) at [875] contrasting prisoners' social well-being with community social well-being.

213 Severinsen and Peart conclude that cost-benefit analysis delivers the best analytical tool to provide assessment of the greatest well-being to the community, across all dimensions. Severinsen and Peart, above n 108, at 171.

214 In weighing the evidence, courts decide facts based on the "balance of probabilities", which in most cases means that a fact is found more likely than not to be true: *R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52 at [129]. This is complicated in the context of future predictions. While at common law, the courts ordinarily disregard probabilities of less than 50 per cent in relation to "facts", RMA, s 3 requires evaluation of "potential" effects that have either a "high probability" to occur or a "low probability" but "high potential impact". The Court in *Long Bay-Okura Great Park Society Inc v North Shore City Council* EC Auckland A078/08, 16 July 2008 at [45] observed that

qualitative, future effects can be particularly challenging.²¹⁵ In the instance of the establishment of Wiri prison and associated social effects, Judge Harland concluded that assertions related to community pride, cohesion and people's perception and related impact to well-being and health can only be given weight if reasonably based on real risk supported by the evidence.²¹⁶

5.3.3 Distinction between "health" and "well-being"

Distinctions between "well-being" and "health" are not clear-cut,²¹⁷ and the terms remain undefined in environmental legislation and decisions of the courts.²¹⁸ They are commonly employed together and between the two throw a wide net capable of capturing broad states and conditions and of being employed in diverse contexts. Their breadth reflects the breadth of the human condition and they are capable of flexing to capture new social and cultural and environmental meanings and responding to new challenges and technologies. In relation to health, Reeve concludes that "... both the wording and the Court's interpretation of the Act offer broad scope for the protection of human

s 3 essentially requires a risk-based analysis for future effects: "The conjunction of 'low probability' and 'high potential impact' strongly suggests the concept of risk because the relationship between probabilities of an effect and its consequences or costs is incorporated in the definition of 'risk'." Following *Long Bay*, the courts seem largely united in their determination that "future predictions" are assessed differently than other facts. In such a case, the assessment does not depend on proof that the "potential effect will more likely than not occur"; rather, the "risk of some future event" is to be proven on a balance of probabilities to the statutory standard set out in s 3: *R J Davidson Family Trust* at [129] and [133].

215 Social effects are more than just "uneasiness" or concern for the future. The existence of public interest groups, and related proceedings alone, do not provide evidence of adverse social effects: *Ngataranga Bay 2000 Inc v Attorney General* unreported Planning Tribunal A016/94 at 26–27. See also *Sanford Ltd v Minister of Fisheries* [2008] NZCA 160 at [80] where the Court of Appeal in the context of s 8 of the Fisheries Act 1996 took a pragmatic approach to uphold the Minister's approach of assessing qualitative well-being factors by economic modelling and stated: "Leaving the decision-making criteria to a subjective evaluation of unquantified and unquantifiable wellbeing factors relating to recreational fishers, which would then have had to be weighed against similarly vague commercial factors, would not have necessarily led to a better quality decision than that actually taken."

216 *Final Report and Decision of the Board of Inquiry into the Proposed Men's Correctional Facility at Wiri* Vol 1 (2011) at [402].

217 For instance, the Court of Appeal noted likely intersections (in the context of offensive or objectionable activity) between Māori issues/cultural well-being and issues of health and safety: *Watercare Services Ltd v Minihinnick* (1997) 3 ELRNZ 511, [1998] 1 NZLR 294, [1998] NZRMA 113 at 513; and for comment see Severinsen and Peart, above n 108, at 64.

218 In the context of s 8 of the Fisheries Act 1996 and sustainable utilisation of fisheries resources, Harrison J in assessing the extent to which kahawai catch provides for the social, economic and cultural well-being of recreational fishers concluded that well-being meant the state of people's health or physical well-being.

health”.²¹⁹ Severinsen and Peart suggest that “generally a distinction can be made between bottom lines to prevent illness, and environmental wellbeing more broadly”, yet the interrelationships between the two and lack of definition make it difficult to draw this line with confidence.²²⁰ “Health” is defined as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”²²¹ and limiting health to an antonym of illness does not fit modern conceptions of health.

Decisions of the courts considering health address factors such as the removal of large trees in urban areas,²²² boating navigation and safety,²²³ admission of sunlight and trees,²²⁴ air pollution,²²⁵ radio frequency radiation,²²⁶ and intrusive noise.²²⁷ Each of these factors may be considered both a potential effect on the environment and/or a well-being factor, but central focus is more likely to fall upon proof of the effect and its relative weight as against competing interests than upon definition.

Harris argues that the terms “health” and “safety” are superfluous in RMA, s 5(2) because the interests they describe are subsumed by the concept of social well-being.²²⁸ Certainly, health does not feature prominently in the case law or on the agendas of urban planners.²²⁹ Commentators suggest this may be due to perceived mandate issues,²³⁰ lack of training in relation to health and well-being,²³¹ and dislocation of resource management from the Ministry of Health.²³² Conceptions of health also fluctuate according to cultural and social conditions, and clear differences can be discerned between Māori and Western concepts of health.²³³

219 Belinda Reeve “Sustainable management and public health in New Zealand” (2005) 6 BRMB 73.

220 Severinsen and Peart, above n 108, at 64.

221 WHO, above n 18.

222 *Butterworth v Auckland City Council* [2010] NZRMA 229 at [14].

223 *Yachting New Zealand v Tasman DC* [2004] NZRMA 373 at [33].

224 *Auckland City Council v John Woolley Trust* (2008) 14 ELRNZ 106 at [48].

225 *Nelson Intermediate School v Transit New Zealand* (2004) 10 ELRNZ 369 at [126]–[130]. Judge Smith observes at [128] that “Health is expressed in the Act in broad and normative terms”.

226 *McIntyre v Christchurch City Council* (1996) 2 ELRNZ 84 at [86].

227 *Meridian Energy Ltd v Wellington City Council* [2011] 232 at [122].

228 Harris, above n 110, at 59–60.

229 Beca Carter Hollings & Ferner Ltd (Beca) *Urban planners’ knowledge of health and wellbeing issues: A survey of urban planners for the Public Health Advisory Committee (PHAC)* (PHAC, Wellington, 2010) at 2.

230 At 10.

231 At 2.

232 David Sinclair “The Resource Management Act (1991) in Public Health Law” (2003) 7 NZJEL 275 at 279.

233 At 280.

6. CONCLUSIONS

“Well-being” is a multi-dimensional term and may be interchanged with other common terms. Defining it — or even spelling it — remains largely unresolved and requires interpretation and measurement in context. Neither is well-being a congruent whole. Instead, it is composed of various dimensions that often conflict within and between each other. “Well-being” is generously applied in New Zealand legislation and policy, but seldom defined. Application tends to the uncritical in terms of definition and theoretical account. This may serve to mask important differences between the states, which are not necessarily correlative, such as those between individual and collective well-being, or the way environmental well-being underpins all other aspects of human well-being. It may also occasion conflation of “well-being” with “development”. The work undertaken by the New Zealand Treasury is intended to overcome some of the difficulties in definition and measurement, but this work remains disconnected from New Zealand law.

A fundamental question to consider is whether the breadth of the term “well-being”, and the debates about its interpretation, reduce its utility in law. The authors have concluded that the competing tensions evident in modern environmental law do not respond to confinement and in any event an expansive holistic term is of value. The term carries a range of important considerations that are essential to sustainability, and the authors conclude that its undefined and fluid nature supports creativity and breadth in the application of the law. In saying this, the authors recognise that its employment is context-dependent and heavily reliant upon contextual interpretation.

Our review found that although the same term “well-being” is used with frequency in New Zealand legislation, the context and method of its employment may demonstrate important differences. Key shifts are evident in:

- the subject of well-being;
- the nature and extent of any obligation in respect of well-being;
- the identity of the obligor; and
- the particularisation of dimensions of well-being.

Although the broad term “well-being” may remain apposite in each context, this versatility indicates the need for particularisation in context. The extent to which such particularisation can be integrated between statutes will be dependent upon evident relationships and commonalities between statutes.

Criticism has been levelled at a normative disconnect between the LGA and the RMA and at the failure of the RMA to take a proactive approach to well-being, arising largely from the statutory purpose which enables people and communities to provide for their own well-being. This article concludes

that the RMA indirectly sustains promotion and/or provision of well-being by local authorities through a range of statutory measures. Further, it identifies that RMA national policy expands upon the well-being purpose, and in one instance, requires direct provision of well-being by local authorities in planning outcomes and processes under the RMA, potentially exceeding the s 5 mandate. This article recommends revision of the approach to well-being in resource management law to enable explicit dual provision for well-being such that people and communities can make their own provision at the same time as local authorities are obliged to promote it. Furthermore, it is recommended that attention be given to the development of creative planning techniques to be applied by local authorities to enable democratic, dynamic and adaptive delivery of well-being. In addition, an anomaly is identified with the failure of the RMA to enable people to provide for their environmental well-being.

To address issues of vagueness in securing well-being and competing elements, the authors recommend stronger measures in resource management policies and plans to identify competing well-beings at both the national, regional and local levels *and* to express priorities. The literature suggests that the definition of well-being of people and communities is a democratic process, and accordingly to avoid potential democratic deficit at the consent level, this article recommends greater identification of priorities at the policy and plan level. In ascertaining priorities, one factor stands out from the literature, and this is the vital role of the natural environment in sustaining all aspects of well-being and the authors recommend legal recognition accordingly.